

**SOAH DOCKET NO. 582-09-2557
TCEQ DOCKET NO. 2009-0048-UCR**

APPEAL OF MULTI-COUNTY WATER	§	BEFORE THE STATE OFFICE
SUPPLY CORPORATION TO REVIEW	§	
THE WHOLESALE WATER RATE	§	
INCREASE IMPOSED BY THE CITY OF	§	
HAMILTON, CERTIFICATE OF	§	OF
CONVENIENCE AND NECESSITY NO.	§	
11525, AND REQUEST FOR INTERIM	§	
RATES; APPLICATION NO. 36280-M	§	ADMINISTRATIVE HEARINGS

CITY OF HAMILTON’S EXCEPTIONS TO PROPOSAL FOR DECISION

TO THE HONORABLE TRAVIS VICKERY, ADMINISTRATIVE LAW JUDGE:

COMES NOW, THE CITY OF HAMILTON (the “City”), Respondent herein, and files its Exceptions to the Proposal for Decision (“PFD”) issued by the Administrative Law Judge (“ALJ”) on April 13, 2010. Pursuant to the letter attached thereto, these exceptions are due by May 3, 2010, and are therefore timely.

I.

ERRATA CORRECTIONS

The City suggests and requests the following non-substantive changes to the PFD:

1. In the case style header on page 1 of the PFD and on page 1 of the proposed Order it is indicated that this rate appeal concerns rates in Cooke County. This appeal, however, concerns rates in Hamilton County. Cooke County is located in North Texas, North of Fort Worth, along the Red River. The City is located in Hamilton County, and Multi-County Water Supply Corporation (“MCW”) has a service area that includes parts of Hamilton, Coryell and Lampasas Counties, which are all Southwest of Fort Worth and Northwest of Austin. None of the issues raised in this appeal concern or have any impact on Cooke County. The City suggests that the word “Cooke” be replaced with the word “Hamilton.”
2. On page 11 of the PFD in the first paragraph, the ALJ states that “[t]he ED and MCW argued that” certain matters were irrelevant, and that “[t]he ALJ generally agrees with the ED and MCW on this point.” The City believes that the ALJ intended to state that the ED and the City made the argument that is being discussed, and that the ALJ agrees with

the ED and the City. The City suggests that the word “MCW” be replaced with the word “City” in the two places quoted above.

II.

SUBSTANTIVE EXCEPTION

The City generally agrees with the conclusions reached by the ALJ. Based on remarks that the ALJ made in a previous order, the City understands that the ALJ wishes to fully develop the record and provide guidance for future wholesale water rate appeal cases. Therefore, to this end, the City respectfully makes the following substantive exception:

3. On page 10 of the PFD, the ALJ states that he “finds that the only factors relevant to this proceeding are those raised by MCW.” MCW only raised factors A-H in 30 TAC § 291.133(a)(3). The City would argue that the rules make all the factors set forth in § 291.133(a)(3) relevant, along with others not listed, and that a respondent is entitled to offer evidence on factors not raised by the petitioner in order to defend allegations that a wholesale rate is improper. To hold otherwise would encourage petitioners in future cases to only raise factors that favor it the most, and intentionally forego raising factors that might favor the respondent. While it certainly makes sense not to address factors which are not raised by either party and which there is no credible evidence to support or refute, when a respondent offers evidence that one factor should weigh in its favor then that factor should also be included in the list of reasons supporting the PFD. Therefore, the City argues that the factor set forth in 30 TAC § 291.133(a)(3)(G) is also relevant, and requests that the City’s Proposed Findings of Fact 56 and 57 be included in the proposed Order. Specifically, those proposed findings of fact are as follows:

“56. The City’s rate to MCWSC is \$.65 lower than the wholesale rate charged to Comanche County Water Supply Corporation by the City of Comanche.”

“57. The City of Comanche buys its water from Upper Leon, just as the City of Hamilton does, and pays the same rate as the City of Hamilton.”

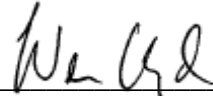
III.

CONCLUSION

The City respectfully requests the above changes be made the PFD.

Respectfully submitted,

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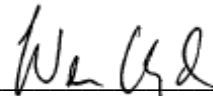
CERTIFICATE OF SERVICE

I certify that on this the 3rd day of May, 2010, a true and correct copy of this the City of Hamilton's Proposed Findings of Fact and Conclusions of Law has been sent to the persons listed below by certified mail, return receipt requested.

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Further, a courtesy copy of this document is contemporaneously being sent by electronic mail to the Honorable Travis Vickery, with a carbon copy to the above attorneys representing the parties of record.


Wesley D. Lloyd